THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

Writ Petition Nos. 27987, 26222 and 27901 of_2005

Date: 10th February, 2006

W.P.No. 27987 of 2005

Between:

Sri Biharilal Agarwal …Petitioner

A N D

1. The Project Director & Special Collector

(Land Acquisition), Outer Ring Road (ORR)

Huda Complex, Tarnaka, Hyderabad

…Respondent

***

W.P.No. 26222 of 2005

Between:

Nishhi Agarwal and another …Petitioners

A N D

The Government of Andhra Pradesh

Rep. by its Principal Secretary,

Municipal Administration & Urban

Development Department,

Secretariat Buildings, Hyderabad and Others …Respondents

***

W.P.No.27901 of 2005

Between:

1. C.Ramakrishna S/o.C.Kondappa,

R/o.D.no.5-4-450, Nampally Station Road,

Hyderabad and others.

…Petitioners

and

1. The Project Director & Special Collector (Land Acquisition)

Outer Ring Road (ORR), Huda Complex, Tarnaka, Hyderabad

and another.

…Respondents

THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

Writ Petition Nos. 27987, 26222 and 27901 of 2005

COMMON ORDER :

In these three writ petitions challenge has been made to the notification under

Section 4(1) of the Land Acquisition Act bearing No. C/ROR/951/2005, dated 24-11-2005. The petitioners in W.P.No. 26222 of 2005 claim to be the owners and possessors of the lands bearing Survey Nos. 14,40 and 41 admeasuring Ac. 1-17 guntas and Ac. 0-23 guntas respectively situated at Tondupally village, Shamshabad mandal, Ranga Reddy District.

2. In W.P.No. 27987 of 2005 the petitioners claim to be the owners and possessors of lands bearing Survey Nos. 13,14,15,26,27 in an extent of Ac. 0.04, Ac. 1.17, Ac. 0.33, Ac. 1.00, Ac. 0.13, Ac. 1.33 guntas respectively situated at Toundupally village, Shamshabad Mandal, Ranga Reddy District.

3. In W.P.No.27901 of 2005 the petitioners claim to be the owners and possessors of lands bearing Survey Nos. 5 to 9, 10/1/A, 26,27,28P,11,12,14,23P, 24P, 62, 16P,25,28, 29P,30,32,35,36 to 39 situated at Kishanguda village, Shamshabad Mandal, Ranga Reddy District.

4. Notification under Section 4(1) of the Land Acquisition Act in proceeding Nos. C/ORR/951/2005, dated 24-11-2005 and C/ORR/1073/2005, dated 12-12-2005 came to be issued proposing to acquire the lands of the petitioners for the purpose of formation of Outer Ring Road and Junction (herein after referred to as “ORR” for brevity). By invoking urgency clause under Section 17(4) of the Land Acquisition Act, enquiry under Section 5-A came to be dispensed with and accordingly, draft declarations under Section 6 of the Act came to be published. The petitioners challenged the notification under Section 4(1) of the Land Acquisition Act as well as dispensing with enquiry under Section 5-A by invoking urgency clause under Section 17(4) of the Land Acquisition Act. Their principal objection is that the ORR junction can be formed nearby area i.e. at Pedda Shapur village where the Governments lands are available. Since the Government constituted a committee with Senior Officers to look into the objections in respect of number of changed effected by the authorities the said committee made certain suggestions and therefore, pending consideration of the suggestions at various levels, issuing notification proposing to acquire the lands of the petitioners for formation of ORR junction is unjustified. For better understanding of the grievance of the petitioners, Pars 4 and 5 of the writ affidavit in W.P.No. 26222 of 2005 needs to be noted and they are :

“I submit that in fact the Outer Ring Road Junction can be formed nearby area viz. at Pedda Shapur village, where the Government lands are available. I also submit that the Government recently has constituted a Committee with the Senior Officers to look into the objections with regard to formation of Outer Ring Road in respect of number of changes effected by the authorities at their whims and fancies and the said Committee is looking into the matter and suggested some changes and the same are under discussion at various levels before the Government.

While the matter stood thus, the Land Acquisition authorities, without even waiting for the report and decision of the Committee, has issued the impugned notification proposing to acquire the lands in question, depriving our rights and livelihood, which is nothing but arbitrary exercise of power. In fact the proposed junction is not required at the place and the same can be formed at nearby place where the Government lands are available. I came to know that some persons have filed writ petitions before this Hon’ble Court challenging the notifications issued by the Government exercising the eminent domain power in an arbitrary and discriminatory manner without any purpose and without notice. Since the committee is looking after the matter and until and unless it is approved by the Technical Experts, it cannot be said that these lands are required for the purpose of outer ring road and the proposed acquisition is arbitrary, illegal and contrary to the provisions of the Land Acquisition Act. It can also be seen that the impugned notification stipulates that the Special Deputy Collector, Land Acquisition Unit-1 has been appointed as the Collector for the purpose of functioning under Section 5A of the Act and simultaneously enquiry under Section 5A has been dispensed with. This itself clearly reveals that it is total non-application of mind by the respondent authorities. I submit that there is no real urgency and in fact no steps have been taken for formation of Outer Ring Road itself and the Committee is looking into the alignment and formation of outer ring road and at this stage, the proposed acquisition for formation of junction is mala fide, illegal and arbitrary. If the Committee proposes to change the alignment, the proposed acquisition will itself colourable and it is very difficult for the petitioners to get reconveyance of the land as the legal position stands today. As such it is submitted that the entire exercise of power under the Land acquisition Act is extraneous to the objectives of public purpose since the proposed formation of outer ring road and its alignment is yet to be finalized. The action of the authorities in picking and choosing to set up junction by acquiring the lands is on extraneous considerations, which is also challenged in similar writ petitions before this Hon’ble Court and the same are pending. I am advised to submit that invoking of urgency clause is not necessary in the instant case. Had the authorities conducted Section 5A enquiry, the

> necessity to acquire the land and the location of junction would have properly been explained to the authorities. The action of the respondents is only to deprive our fundamental rights guaranteed under Article 14 and 300A of the Constitution of India. I submit that since the 3rd respondent is abusing the powers vested in it by invoking urgency clause under Section 17 of the Land Acquisition Act by issuing number of notifications indiscriminately, we are left with no other alternative, except to seek indulgence of this Hon'ble Court under its extraordinary jurisdiction".

5. 1st respondent filed counter-affidavit. One M.Vanaja Devi, Special Deputy Collector (Land Acquisition), ORR, HUDA, Tarnaka, Hyderabad has sworn to the counter affidavit. It is stated in the counter affidavit that the writ petitions are filed after issuance of award Enquiry Notice and much later to Section 4(1) Notifications and Section 6 declarations. The writ petitions are not maintainable after finalization of Section 4(1) Notifications and Section 6 declarations. Award had already been passed in respect of lands situated at Tondapally village, Shamshabad. After acquisition of lands at Tondapally/Shamshabad villages a decision to form junction at Kishanguda/Tondupally/Ootpally villages was taken basing on the technical experts committee. In view of the technical experts report, Section 5-A Enquiry has been dispensed with by invoking urgency clause under Section 17(4) of the Land Acquisition Act and Award enquiry was also conducted on 26-12-2005 and 27-12-2005, with regard to the other land owners of the village. The change of alignment and confirmation of ORR or suitability of the land is not justifiable issue unless in a given case shows that the change of the land by the State Government and its authorities by factual *mala fide* or is done wrongly by the State authorities under the grab of exercise of eminent domain power. Para 15 of the counter affidavit needs to be noted and it is thus:

> "I further submit that the Writ Petitioner raised the ground of delegation of powers issued by the Government under G.O.Ms. No. 459 revenue dated 08/04/2005 which was notified in the A.P. Gazette No. 217 dt. 12/04/2005 is not tenable in view of the Section 3(c) of central Act which empowers the State Govt. to appoint any officer especially appointed by the appropriate Govt. to perform the functions of the Colllector under the land acquisition Act.

In reply to the averments made in para No.13 of the Affidavit that the delegation of powers to the Project Director, Outer Ring Road & Spl. Collector, Land Acquisition, Hyderabad Urban Development Authority, Hyderabad by the Govt. of Andhra Pradesh is not valid and the delegation powers can be made only to the District Collector under Section 3-A of the Land Acquisition Act is not correct in view of Section 3-C of the Central Act. The Central Act will prevail over the state Amendment made in Section 3-A. The grounds raised that the Section 3-A delegation of powers to be given only to District Collector and not to any other officers is not available in view Section 3-C of Central Act. Section 3-C reads as follows:

The expression Collector means the Collector of a district, and includes a Deputy Commissioner and any officer specially appointed by the appropriate Govt. to perform the functions of a Collector under this Act. The Central Act is made clear that the State Govt. can appoint any officer especially appointed to perform the functions of a Collector under the land acquisition Act. So delegation/or authorization/or appointment of Project Director, Outer Ring Road and Spl. Collector is well with in the powers of the State Govt. When there is an inconsistency of Central Act and the State Act, Article 254 of the Constitution of India has to be relied. This point has been dealt with by the Division Bench of this Hon'ble Court in 1991 (1) ALT Page 478. 1991 (1) APLJ 330 where in the State Amendment to Section 17(5) has been made which held to be repugnant to subsequent Amendment made in the Central Act and held subsection 5 of Section 17 introduced by the State Amendment has become repugnant and void after the Central Amendment Act 68 of 1984 and cannot be enforced. In another decision reported in 1996 LACC Page 538 (Suppl) 1996 (3) SCC 600 Sanjeev Nagar Medical & Health Employees Co-operatives Housing Society Vs. Mohammad Abdul Vaheb and others, the Apex Court while considering 40 days time limit incorporated by the State Amendment in Section 4(1) of L.A.Act is held to be void in view of the 254 of the constitution of L.A.Act.

In view of the above legal position, the delegation or authorization granted by the State Govt. is valid under law.

The provision of Section 3-A of L.A. Act by delegation the powers is only a mistake instead of quoting Section 3© of the Central Act. The State Government has incorporated Section 3-A is only for the purpose of dwelling houses to finalize 20 point formula program and for that purpose Act 22 of 1976 has been passed.

It is further submitted that the Writ Petition is not maintainable since petitioners have not questioned Section 6 declaration and after finalization of the Notifications under

Section 4(1) and 6 of the L.A. Act, the present Writ Petition is filed before conclusion of Award enquiry and approached the Hon'ble High Court which is not permissible under Article 226 of Constitution."

6. Reply affidavit has been filed by the petitioners. It is stated in the reply affidavit that the petitioners through their Welfare Association requested the Government to clarify about the Central land of ORR Junction on N.H.No.7 at Kishanguda village as earlier it was mentioned that the center point would be at 18.9 Kms on NH7. This request was made when the Officers of 1st respondent visited the lands of petitioners for marking the margins, which were contrary to the project report and realignment plans *inter alia* specifying the center point at 18.9 kms on NH7. Petitioners made several representations vide letters dated 23-11-2005, 5-12-2005, 7-12-2005, 9-12-2005, 15-12-2005 and 27-12-2005 requesting to clarify the above position.

7. Heard Sri C.Kodanda Ram, learned counsel for the petitioners in W.P.No. 27901 of 2005 and W.P.No. 27987 of 2005; Sri E.Madan Mohan Rao, learned counsel appearing for the petitioners in W.P.Nos.26222 of 2005, and Sri Rajagopala Rao, learned counsel appearing for respondents in all three writ petitions.

8. Learned counsel appearing for the petitioners in W.P.No. 27901 of 2005 and 27987 of 2005 submits that the Government having appointed Special Deputy Collector, (Land Acquisition) Unit 1, Outer Ring Road, HUDA, Hyderabad to perform the functions of the Collector under Section 5-A of the Land Acquisition Act is not justified in dispensing with 5-A enquiry by invoking urgency clause under the provisions of Section 4 (1) and Section 17(4) of Land Acquisition Act. He further submits that an extent of Ac.13-23 guntas of land situated at Tondupally village proposed to be acquired for formation of ORR Junction is not required. A further submission has been made that Section 6 declaration is invalid since it came to be issued before causing local publication of Section 4(1) notification. He would also contend that Section 6 declaration came to be issued before local publication of Section 4(1) notification and thus the declaration is invalid and contrary to the provision of the Land Acquisition Act. In support of his submission, reliance has

been placed on the decisions of Supreme Court in ***Hindustan Petroleum Corporation Ltd., Vs. Darius Shapur Chenai,*** and the decision of this Court in ***E.Rama Murthy Vs. Government of A.P. Revenue Department.***

9. Learned counsel appearing for petitioners in W.P.No. 26222 of 2005 while adopting the arguments of Sri Kodanda Ram laid much emphasis on 4(1) notification wherein appointment of Special Deputy Collector to perform functions of Collector under Section 4-A of the Act has been indicated and thus contended that dispensing with Section 5(A) enquiry is illegal, arbitrary and unsustainable.

10. *Per contra* learned counsel appearing for the respondents submits that the petitioners in W.P.No.26222 of 2005 having participated in the Award Enquiry cannot be permitted to challenge the notification issued under Section 4(1) as well as draft declaration under Section 6 of the Land Acquisition Act. He further submits that petitioners cannot suggest what extent is required for formation of the ORR and junction and it is for the State Government to decide. To buttress his submissions, reliance has been placed on the decision of this Court in W.P.No.26360 of 2005 dated 24-1-2006 (Kilarapu Satyavati Vs. The District Collector, East Godavari), ***Peddi Anjaiah Vs. L.A.O. and R.D.O. Karimnagar*** and decision of Supreme Court in ***Mohan Singh Vs. International Airport Authority of India.***

11. It is settled law that the process of acquisition has to start with a notification issued under Section 4(1) of the Act, which is mandatory, and even in cases of urgency, the issuance of notification under Section 4 of the Act is a condition precedent to the exercise of any further powers under the Act. Any notification, which is aimed at depriving a man of his property, issued under Section 4 of the Act has to be strictly construed and any serious lapse on the part of the acquiring authority would vitiate the proceedings and cannot be ignored by the courts. The object of issuing a notification under Section 4 of the Act is two fold. Firstly, it is a public announcement by the government and a public notice by the Collector to the effect that the land, as specified there in, is needed or is likely to be needed by the government for the “public purpose” mentioned therein; and secondly, it authorizes the departmental officers or officers of the local authority, as the case may be to do all such acts as are mentioned in Section 4(2) of the Act. The notification has to be

published in the locality and particularly persons likely to be affected by the proposal have to be put on notice that such an activity is afoot. The notification is, thus, required to give with sufficient clarity not only the “public purpose” for which the acquisition proceedings are being commenced but also the “locality” where the land is situated with as full a description as possible of the land proposed to be acquired to enable the “interested” persons to know as to which land is being acquired and for what purpose and to take further steps under the Act by filing objections etc., since it is open to such persons to canvass the non-suitability of the land for the alleged “public purpose” also. If a notification under Section 4(1) of the Act is defective and does not comply with the requirements of the Act, it not only vitiates the notification, but also renders all subsequent proceedings connected with the acquisition, bad.

12. The main contentions urged in these writ petitions are, *firstly,* the extent proposed to be acquired for formation of outer ring road and junction is on high side and such an extent of land is not required; *Secondly*, Section 6 declaration is published much prior to the local publication of Section 4(1) notification and thus, Section 6 declaration is invalid; *Thirdly*, the Government having appointed an officer to conduct enquiry under Section 5-A of the Act, mechanically dispensed with such an enquiry by invoking urgency clause under Section 17(4) of the Act.

13. The respondents have stated in the counter affidavit that the formation of junction at Kishanguda/Tondupally/Ootpally villages was taken basing on the technical experts committee. When such is the assertion, it is not within the competency of this Court in exercise of powers under Article 226 of the Constitution of India to examine the sufficiency or otherwise of the extent of land proposed to be acquired for the formation of outer ring road and junction. It must be borne in mind that the satisfaction of the Government as to the existence of the public purpose cannot be lightly faulted and it must remain upper most in the mind of the Court vide the decision of Supreme Court in ***Pratibha Nema Vs. State of Madhya Pradesh***.

14. The next contention of the petitioners is that Section 6 declaration came to be published even before the local publication and thus, Section 6 declaration is invalid. At this juncture, three provisions viz., Sections 4, 6 and 17 of the Act are

required to be noted and they are:

"SECTION 4 Publication of preliminary notification and powers of officers thereupon.

(1) Whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose[6][or for a company], a notification to that effect shall be published in the Official Gazette[6][and in two daily newspapers circulating in that locality of which at least one shall be in the regional language] and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality[6](the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the notification)].

(2) Thereupon it shall be lawful for any officer, either generally or specially authorized by such Government in this behalf, and for his servants and workmen,- to enter upon and survey and take levels of any land in such locality; to dig or bore into the sub-soil; to do all other acts necessary to ascertain whether the land is adapted for such purpose; to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon; to mark such levels, boundaries and line by placing marks and cutting trenches; and, where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle:

Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days' notice in writing of his intention to do so."

(Section 6 in its application to the State of Andhra Pradesh)

"Section 6. Declaration that land is required for a public purpose:- (1) Where the appropriate Government or the District Collector is satisfied that any particular land is needed for the purpose of construction, extension or improvement of any dwelling house for the poor, a declaration shall be made to that effect under the signature of a Secretary to such Government or any other officer duly authorized to certify their orders or the District Collector as the case may be, and different declarations may be made, from time to time, in respect of different parcels of land covered by the same notification under Section 4, sub-section (1):

(i) published after the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1957 (1 of 1967), but before the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of one year from the date of the publication of the notification.

ii) Published after the commencement of the Land Acquisition (Amendment) Act,1984, shall be made after the expiry of one year from the date of the publication of the notification.

Provided further that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a company or wholly or partly out of public revenues or some fund controlled or managed by a local authority.

Explanation: 1: In computing any of the periods referred to in the first proviso, the period during which any action or proceeding to be taken in pursuance of the notification issued under Section 4 sub-section (1),is stayed by an order of a Court shall be excluded.

Explanation2: Where the compensation to be awarded for such property is to be paid out of the funds of a corporation owned or controlled by the State, such compensation shall be deemed to be compensation paid out of public revenues;

2)Every declaration shall be published in the Official Gazette (or the District Gazette) and in two daily newspapers circulating in the locality in which the land is situate of which at least one shall be in the regional language and the Collector shall cause public notice of the substance of such declaration to be given at convenient places in the said locality (the last of the dates of such publication and the giving of such public notice being hereinafter referred to as the date of publication of the declaration) and such declaration shall state the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area, and where a plan shall have been made of the land, the place where such plan may be inspected.

(3) The said declaration shall be conclusive evidence that the land is needed (for a public purpose specified in sub-section (1) or for a company as the case may be; and after making such declaration, the (appropriate Government) or the District Collector) may acquire the land in a manner hereinafter appearing."

"Section 17. **Special powers in cases of urgency**:- (1) In cases of urgency, whenever the appropriate Government or the District Collector so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in Section 9, sub-section (1) take possession of any land needed for a public purposes. Such land shall thereupon vest absolutely in the Government, free, from all encumbrances.

Explanation:- This sub-section shall apply to any waste, or arable land, notwithstanding the existence thereon of scattered trees or temporary structures such as huts, pandals or sheds.

(2) In the following cases, that is to say,

a. Whenever, owing to any sudden change in the channel of any navigable river or other unforeseen emergency, it becomes

necessary for any Railway Administration to acquire the immediate possession of any land for the maintenance of their traffic or for the purpose of making thereon a river-side or ghat station, or of providing convenient connection with or access to any such station.

b. Whenever in the opinion of the Collector it becomes necessary to acquire the immediate possession of any land—

iii. for the purpose of any library or educational institution, or

i. for construction, extension or improvement of—

a. any building or other structure in any village for the common use of the inhabitants of such village, or

b. any godown for any society registered or deemed to be registered under the Madras Co-operative Societies Act, 1932, or A.P. Co-operative Societies Act, 1952 (Act XVI of 1952);

c. any dwelling-house for the poor or

d. any irrigation tank, irrigation or drainage channel or any well, or

e. any road, or

(or (iii) for any purpose connected with the Nagarjunasagar Project in the area to which the Nagarjunasagar Project (Acquisition of Land) Act, 1956, extends)

(or (iv) for any purpose incidental to or connected with the Visakhapatnam Steel Project, in the area to which the Visakhapatnam Steel Project (Acquisition of Lands) Act, 1972 extends), or

(iv) for the execution of any housing scheme under the Andhra Pradesh Housing Board Act, 1956)

or the appropriate Government or the District Collector as the case may be considers it necessary to acquire the immediate possession of any land for the purpose of maintaining any structure or system pertaining to irrigation water supply drainage, road communication or electricity) the Collector may, immediately after the publication of the notice mentioned in sub-section (1) and with the previous sanction of the appropriate Government, or the District Collector as the case may be enter upon and take possession of such land, which shall thereupon vest absolutely in the Government free from all encumbrances:

Provided that the Collector shall not take possession of any building or part of a building under this sub-section without giving to the occupier thereof at least forty-eight hours' notice of his intention so to do, or such longer notice as may be reasonably sufficient to enable such occupier to remove his movable property from such building without

unnecessary inconvenience.

(3) In every case under either of the preceding sub-sections the Collector shall at the time of taking possession offer to the persons interested compensation for the standing crops and trees (if any) on such land and for any other damage sustained by them caused by such sudden dispossession and not excepted in Section 24; and, in case such offer is not accepted, the value of such crops and trees and the amount of such other damage shall be allowed for in awarding compensation for the land under the provisions herein contained.

(3-A) Before taking possession of any land under sub-section (1) or sub-section (2), the Collector shall, without prejudice to the provisions of sub-section (3),--

(a) tender payment of eighty per centum of the compensation for such land as estimated by him to the persons interested entitled thereto, and

b. pay it to them, unless prevented by some one or more of the contingencies mentioned in Section 31, sub-section (2),

and where the Collector is so prevented, the provisions of Section 31, sub-section (2), except the second proviso thereto), shall apply as they apply to the payment of compensation under that section.

(3-B) The amount paid or deposited under sub-section (3-A), shall be taken into account for determining the amount of compensation required to be tendered under Section 31, and where the amount so paid or deposited exceeds the compensation awarded by the Collector under Section 11, the excess may, unless refunded within three months from the date of the Collector's award, be recovered as an arrear of land revenue.

(4) In the case of any land to which, in the opinion of the appropriate Government, the provisions of sub-section (1) or sub-section (2) are applicable, the appropriate Government may direct that the provisions of Section 5-A shall not apply, and if it does so direct, a declaration may be made under Section 6 in respect of the land at any time after causing public notice under Section 4, sub-section (1).

(5) (a) In any case where the State Government have directed under sub-section (4) that the provisions of Section 5-A shall not apply, the Collector shall take possession of the land within three months thereof.

(b) If, however, the Collector fails to take possession of the land within the aforesaid period of three months, the provisions of Section 5-A shall apply as if there is no such direction that section 5-A shall not apply, and in all such cases the period of thirty days referred in Section 5-A shall be reckoned from the date of expiration of three months specified in clause (a).

Validation of certain acquisitions:-- Notwithstanding any judgment, decree or order of any court, tribunal or other authority to the contrary,--

(a) no acquisition of land made or purporting to have been made under

the principal Act before the commencement of the Land Acquisition (Andhra Pradesh Amendment and Validation) Act, 1983 and no action taken or thing done (including any order made, agreement entered into, or notification published) in connection with such acquisition shall be deemed to be invalid or ever to have become invalid merely on the ground--

i. that the Collector has not caused public notice to be given as required under sub-section (1) of Section 4 of the principal Act, simultaneously with the publication of the notification in the Andhra Pradesh Gazette as the case may be;

ii. that a declaration has been made under Section 6 of the principal Act, after a considerable delay in respect of any land in the case of which the State Government have directed under sub-section (4) of Section 17 of the principal Act shall not apply;

iii. that the possession of the land has not been taken immediately after a direction by the State Government that Section 5-A of the principal Act shall not apply;

(b) any acquisition of land in pursuance of any notification published under sub-section (1) of Section 4 of the principal Act before the Commencement of the Land Acquisition (Andhra Pradesh Amendment and Validation) Act, 1983, may be made after such commencement, and no such acquisition made and no action taken or thing done (including any order made, agreement entered into, or notification published) whether before or after such commencement, in connection with such acquisition shall be deemed to be invalid merely on the grounds referred to in clause (a) or any of them)."

15. It is held by the Supreme Court in ***First Land Acquisition Collector and others V. Nirodhi Prakash Gangoli and another*** that the question of urgency of an acquisition under Section 17(1) and (4) of the Act is a matter of subject to satisfaction of the Government and ordinarily it is not open to the Court to make a scrutiny of the propriety of that satisfaction on an objective appraisal of facts.

16. It is also held by the Supreme Court in ***Union of India and others V. Praveen Gupta and others*** that decision on urgency is an administrative decision and is a matter of subjective satisfaction of the appropriate Government on the basis of the material available on record. Therefore, there was no need to pass any reasoned

order to reach the conclusion that there is urgency so as to dispense with the enquiry under Section 5-A of the Act in exercise of power under Section 17(4) of the Act.

17. Section 6 contemplates the making of a declaration as to the requirement of the land for the public purpose. This declaration in the normal course will have to be made only after the report of the Inquiry Officer under Section 5-A is considered by the appropriate Government. This declaration is required to be published in the official gazette. Section 9 contemplates issuance of a notice to the interested persons after steps enumerated in Sections 7 and 8 are completed. Section 11 contemplates an enquiry and award being made by the Collector and Section 16 contemplates when an award is made under Section 11, the Collector is entitled to take possession of the land which thereupon vests absolutely with the Government. The only exception to deviate from the above scheme of the Act is found under Section 17 of the Act.

18. A careful perusal of the Section 17 shows that sub-section (1) of Section 17 contemplates taking possession of the land in the case of urgency without making an award but after the publication of Section 9(1) notice and after the expiration of 15 days of publication of Section 9(1) notice. Therefore, it is seen that if the appropriate Government decides that there is an urgency to invoke Section 17(1) in the normal course, Section 4(1) notification will have to be published. Section 6 declaration will have to be made and after completing the procedure contemplated under Sections 7 and 8, 9(1) notice will have to be given and on expiration of 15 days from the date of such notice, the authorities can take possession of the land even before passing of an award. Sub-section (2) of Section 17 contemplates a different type of urgency inasmuch as it should be an unforeseen emergency. Under this Section if the appropriate Government is satisfied that there is such unforeseen emergency the authorities can take possession of the land even without waiting for 15 days period contemplated under Section 9(1). Therefore, in cases, where Government is satisfied that there is an unforeseen emergency, it will have to in the normal course, issue a Section 4(1) notification, hold 5-A inquiry, make Section 6 declaration, and issue Section 9(1) notice and possession can be taken immediately thereafter without waiting for the period of 15 days prescribed under Section 9(1) of the Act.

Section 17(4) as noticed above provides that in cases where the appropriate Government has come to the conclusion that there exists an urgency or unforeseen emergency as required under sub-sections (1) or (2) of Section 17 it may direct that the provisions of Section 5A shall not apply and if such direction is given then 5A inquiry can be dispensed with and a declaration may be made under Section 6 on publication of 4(1) notification possession can be made.

19. Learned counsel appearing for the petitioners, by placing reliance on the judgment of this Court in ***E.Rama Murthy and another Vs. Government of A.P. Revenue Department*** (2nd supra), contends that Section 6 declaration must be after causing local publication of notification under Section 4(1) of the Act.

20. *Per contra*, the learned Counsel appearing for the respondents submits that this issue is no more *res integra* in view of the decision of the apex Court in ***Mohan Singh and others Vs. international Airport Authority of India*** (4th supra). In the cited case, what is required for declaration under Section 6, once Section 5-A enquiry is dispensed with by invoking urgency clause under Section 17(4) of the Act, is the gazette notification and not the local publication. The Supreme Court while considering the issue has observed in para.13 of the judgment, which reads as follows:

> The question is: Whether it is mandatory in such a situation, i.e. after the publication of the notification in the Gazette publication in two local newspapers and giving of notice of the substance of the notification at convenient places in the locality, to await the exercise of power under Section 17(4) ? After giving due and deep consideration to the respective contentions raised by the learned counsel, we are of the considered view that though the compliance of these three steps required under Section 4(1) is mandatory, for the exercise of the power under Section 17(4) it is not necessary that all the three steps should be completed before making the declaration under Section 6(1) and have it published for directing the Collector to take possession under Section 17(1) or 17(2). What is needed is that there should be a gap of time of at least a day between the publication of the notification under Section 4(1) and of the declaration under Section 6(1). Herein, we dispose of the controversy and agree with Shri Shanti Bhushan that the date of the notification and declaration published as mentioned in the Gazette is conclusive but not

the actual date of printing in the Gazette. This interpretation of ours would serve the public purpose, namely, the official functions are duly discharged. When the land is urgently needed under Section 17(1), notice under Section 9(1) would be given to the owner and steps would bet taken to and resume its possession after the expiry of 15 days. If it is needed urgently under Section 17(2), even without waiting for 15 days on issue of notice under Section 9(1) to the owner, the appropriate Government would direct the Collector to take possession of the land immediately. If the publication in the newspapers and in the locality is also insisted upon as preliminary to the exercise of power under Section 17(4) which are mandatory requirements and until last of them occurs, the immediate or urgent necessity to take possession of the land under Section 17(1) or 17(2) before making the award would be easily defeated by dereliction of duty by the subordinate officers or by skilful manoeuvre. The appropriate Government is required to take the decision for acquisition of the land and to consider the urgency or emergency and to make the notification under Section 4(1) and declaration under Section 6 and have them published in the Gazette that the land acquired under Section 4(1) is needed for public purpose; they become conclusive under Section 6, and to give direction to the Collector to take its possession. The publication in the newspapers and giving of notice of the substance of the notification at the convenient places in the locality are required to be done by the Collector, authorized by the Government under Section 7 and his subordinate staff. If dereliction of duty is given primacy, delay deflects public justice to meet urgent situation by the acts of subordinate officers for any reason whatsoever. Until that is done and the last of the dates occurs, Government would be unable to act swiftly for the public purpose to take immediate possession envisaged under sub-section (1) or (2) of Section 17 and they would be easily defeated or frustrated.

21. Sri Madan Mohan, learned counsel appearing for the petitioner in W.P.No. 26222 of 2005, submits that Section 17(4) of the Act as been amended by Act 68 of 1984 and Section 17(4) as amended by A.P. State Act 9 of 1983 are complimentary to each other and there is no inconsistency and therefore they are required to be read together and thus so far as Andhra Pradesh is concerned, the provisions of Section 17(4) as amended by p/1983 are to be taken into consideration to test the validity of Section 6 declaration. In support of his submission, he placed reliance on the decision of the Supreme Court in ***M.Karunanidhi Vs. Union of India.*** He emphasized on paragraphes 34 and 35, which read as under:

"In the case of T. S.Baliah Vs. T.S. Rengachari, (1969) 3 SCR

65 (AIR 1969 SC 701) it was pointed out by this Court that before coming to the conclusion that there is a repeal by implication, the Court must be satisfied that the two enactments are so inconsistent that it becomes impossible for them to stand together. In order words, this Court held that when there is a direct collision between the two enactments, which is irreconcilable then only repugnancy results. In this connection, this Court made the following observations (at p. 703 of AIR)

'Before coming to the conclusion that there is a repeal by implication, the Court must be satisfied that the two enactments are so inconsistent or repugnant that they cannot stand together and the repeal of the express prior enactment must flow from necessary implication of the language of the later enactment. It is therefore necessary in this connection to scrutinize the terms and consider the true meaning and effect of the two enactments".

The provisions enacted in Section 52 of the 1922 Act do not alter the nature or quality of the offence enacted in Section 177, Indian Penal Code but it merely provides a new course of procedure for what was already an offence. In a case of this description the new statute is regarded not as superseding, nor repealing by implication the previous law, but as cumulative.

' A plain reading of the section shows that there is no bar to the trial or conviction of the offender under both enactments but there is only a bar to the punishment of the offender twice for the same offence. In other words, the section provides that where an act or omission constitutes an offence under two enactments, the offender may be prosecuted and punished under either or both the enactments but shall not be liable to be punished twice for the same offence.

On a careful consideration, therefore, of the authorities referred to above, the following propositions emerge:

That in order to decide the question of repugnancy it must be shown that the two enactments contain inconsistent and irreconcilable provisions, so that they cannot stand together or operate in the same field.

That there can be no repeal by implication unless the inconsistency appears on the face of the two statutes.

That where the two statutes occupy a particular field, but there is room or possibility of both the statutes operating in the same field without coming into collision with each other no repugnancy results.

That where there is no inconsistency but a statute occupying the same field seeks to create distinct and separate offences,

no question of repugnancy arises and both the statutes continue to operate in the same field."

22. A question came up for consideration before a Division Bench of this Court in ***Ramayya Vs. Govt. of A.P.*** as to how a repugnancy between sub-section (5) of Section 17 introduced by the State Amendment and the provisions of Land Acquisition Act after the Central Amendment Act 68 of1984, where in it has been held that the State Amendment has become repugnant and void after the Central Amendment Act 68 of 1984. The said Division Bench in the cited case relied on the decision of another Division Bench decision in ***Vana Adamma Vs. District Collector, Srikakulam,*** wherein it has been held that sub-section (5) of Section 17 introduced by the State Amendment has become repugnant and void after the Central Amendment Act 68 of 1984 and cannot be enforced.

23. The repugnancy in the case on hand is under Section 17 (4) as amended by the A.P. State Amendment Act 9 of 1983, in case of dispensing with enquiry under Section 5-A, a declaration may be made under Section 6 in respect of the land at any time after causing public notice under Sub-Section 1, Section 4, and where as under Section 17(4), as amended by Central Amendment Act 68 of 1984, in case of dispensing with the enquiry under Section 5-A, a declaration maybe made under Section 6 in respect of the land at any time after the date of publication of notification under sub-section (1) of Section 4. For better appreciation, I may reproduce Section 17(4) as amended by Central Act 68 of 84 and A.P. State Amendment Act 9/83.

Section 17(4) of Central Act 68 of 84.

"17(4): In the case of any land to which, in the opinion of the (appropriate Government), the provisions of sub-section (1) or sub-section (2) are applicable, the (appropriate Government) may direct that the provisions of Sectin5-A shall not apply, and if it does so direct, a declaration may be made under Section 6 in respect of the land at any time (after the date of the publication of the notification) under Section4, sub-section (1)".

Section 17(4) of State Amendment Act 9/83.

"17(4) In the case of any land to which, in the opinion of the

> appropriate Government, the provisions of sub-section (1) or sub-section (2) are applicable, the appropriate Government may direct that the provisions of Section 5-A shall not apply, and if it does so direct, a declaration may be made under Section 6 in respect of any time 'after causing public notice' under Section 4, sub-section (1)".

24. It is contended by the learned counsel appearing for the petitioners that so far as Andhra Pradesh is concerned, Section 6 declaration can be only after local publication.

25. It can be said without the fear of contradiction that the provisions of Central Act and a State Act in this regard do not go together and are irreconcilable. In ***Karunakar's*** case the Supreme Court held that where the provisions of Central Act and State Act in the concurrent list are irreconcilable, the Central Act will prevail and the State Act will become void in view of the repugnancy. In ***Mohan Singh's*** case it has been held that the object of Section 17 appears to be that when the Government exercised urgency power under Section 17(4) or emergency power under Section 17(2), they form the opinion that the land is needed for public purpose. If the possession of the land is needed urgently or immediately they are required to have the notification under Section 4(1) published in the Official Gazette and within a gap of one day to make the declaration under Section 6 and have the same published under Section 6(1). Thus, what is mandatory is publication of the notification under Section 4(1) in the Gazette. Thereafter within a gap of a day publication of the declaration under Section 6(1) is mandatory. Thereby, the public purpose becomes conclusive, as envisaged under sub-section (3) of Section 6 and the Collector is empowered to take immediate possession of the land for the said public purpose. It is further held that though the compliance of these three steps required under Section 4(1) is mandatory, for the exercise of the power under Section 17(4) it is not necessary that all the three steps should be completed before making the declaration under Section 6(1) and have it published for directing the Collector to take possession under Section 17(1) or 17(2). What is needed is that there should be a gap of time of at least a day between the publication of the notification under Section 4(1) and of the declaration under Section 6(1). For better appreciation, I may refer para 13 of the judgment and it reads as follows:

> "Though the compliance of these three steps required under Section 4(1) is mandatory, for the exercise of the power under

> Section 17(4) it is not necessary that all the three steps should be completed before making the declaration under Section 6(1) and have it published for directing the Collector to take possession under Section17 (1) or 17(2). What is needed is that there should be a gap of time of at least a day between the publication of the notification under Section 4(1) and of the declaration under Section 6(1)."

26. In view of the settled proposition of law that it is date of gazette notification which is required to be taken into consideration for making declaration under Section 6 of the Act in case of invoking urgency clause under Section 17(4) of the Act, I do not see any substance in the contention of the learned counsel for the petitioners with regard to the validity declaration under Section 6 of the Act.

27. The last submission of the learned counsel for the petitioners is that the Government having appointed the enquiry officer to conduct enquiry under Section 5-A of the Act is not justified in invoking the urgency clause under Section 17(4) of the Act.

28. The notification under Section 4(1) of the Act is to be taken in toto. It is explicit from Section 4(1) notification that the land is required urgently for formation of outer ring road and junction and therefore, urgency clause under Section 17(4) of the Act has been invoked dispensing with 5-A enquiry.

29. In view of the above discussion, I find that all the writ petitions are devoid of merit and accordingly the same are hereby dismissed. No order as to costs.

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B.SESHASAYANA REDDY, J.

Date: 10th February, 2006.

Km/cs

THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

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Writ Petition Nos. 27987, 26222 and 27901 of_2005

Date: 10th February, 2006